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IN THE SUPREME COURT
STATE OF ARIZONA

In the Matter of PETITION
TO AMEND RULE 15(a) OF THE
ARIZONA RULES OF CIVIL
PROCEDURE

Supreme Court No. R-06-_____

**Petition to Amend Rule 15(a) of the
Arizona Rules of Civil Procedure**

Pursuant to Rule 28 of the Rules of the Arizona Supreme Court, the State Bar of Arizona hereby petitions this Court to amend Rule 15(a) of the Arizona Rules of Civil Procedure ("Rule 15(a)"), as set forth in the proposed amendments attached in Exhibit A to this Petition. These proposed changes would require a party seeking to amend a pleading by motion: (a) to attach to the motion to amend a draft of the proposed amended pleading that identifies the respects in which the party proposes to amend the pleading; and (b) if the motion to amend is granted, to file and serve the amended pleading within ten days.

Description and Rationale for the Amendments

The State Bar proposes two changes to that portion of Rule 15(a) addressing requests to amend pleadings on motion *after* pleadings have closed.

First, the State Bar proposes an change to Rule 15(a) directing that a party who moves for leave to file an amended pleading must: (a) attach a copy of the proposed amended pleading to the motion; and (b) the proposed amended pleading must indicate how

1 it will amend the current pleading “by bracketing or striking through the text to be deleted
2 and underlining the text to be added.” Given advancements in word processing software,
3 highlighting additions, additions and revisions (to “redline” or “blackline” a document) is
4 comparatively simple. The proposed change is designed to allow the parties and the Court to
5 more easily identify what the proposed amendment seeks to add, delete or revise, which
6 would have the following benefits:

7 (a) It could facilitate stipulations by the parties (where appropriate) to agree
8 to amendments because there would be no doubt about what the amending party is proposing
9 to change.

10 (b) If an issue exists whether an amendment would survive a motion to
11 dismiss, the proposed amendment would make it easier for the Court to decide that issue
12 when deciding whether to grant the motion to amend because the amending party would be
13 required to set forth the amendment in its final form. Currently, because a party is not
14 required to specify the language it intends to use in an amended pleading, a Court often
15 cannot resolve such an issue until after a motion to amend is granted, the amending party
16 files and amended pleading and then the opposing party files a motion to dismiss.

17 (c) It would make the state rule more like the local practice in the United
18 States District Court for the District of Arizona, which would relieve practitioners of having
19 to apply two separate sets of rules regarding motions to amend pleadings.¹

22 ¹ LRCiv 15(a)(1) of the Local Rules of the United States District Court for the District
23 of Arizona currently provides:


24 A party who moves for leave to amend a pleading must attach a
25 copy of the proposed amended pleading as an exhibit to the
26 motion, which shall indicate in what respect it differs from the
pleading which it amends, by bracketing or striking through the
text to be deleted and underlining the text to be added.

Second, the State Bar proposes an amendment to Rule 15(a) directing that, if a motion for leave to amend is granted, the moving party must then file and serve the pleading as amended within ten (10) days of the Order allowing the amended pleading, unless the Court otherwise directs. This change is designed to provide certainty in knowing when to respond to an amended pleading and to make plain that, if leave is granted, the pleading must be finalized, signed, filed and served to be effective. Although the better practice under current Rule 15 is to file and serve a complete amended pleading, the current rule allows an amending party to file and serve a pleading setting forth only the amendments (without the unamended portion of the pleading). See Daniel J. McAuliffe, ARIZONA CIVIL RULES HANDBOOK at 200-01 (2005 ed.). In this additional respect, the proposed amendment changes Rule 15(a) to reflect the better practice.²

Relief Requested

The Petition proposes changes to reflect what is and should be the better practice in amending pleadings on motion. The State Bar of Arizona respectfully requests that the Court amend Rule 15(a) of the Arizona Rules of Civil Procedure in accord with the proposed amendments set forth in Exhibit A.

RESPECTFULLY SUBMITTED this 27th day of July, 2006.


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² Given the temporal flow of current Rule 15(a), the Petition also proposes one non-substantive change: renumbering current Rule 15(a)(2) (setting forth the response time to an amended pleading) as Rule 15(a)(3).

Exhibit A

Ariz. R. Civ. P. 15(a) (NEW LANGUAGE IN CAPS)

1. No change

2. A PARTY WHO MOVES FOR LEAVE TO AMEND A PLEADING MUST ATTACH A COPY OF THE PROPOSED AMENDED PLEADING AS AN EXHIBIT TO THE MOTION, WHICH SHALL INDICATE IN WHAT RESPECT IT DIFFERS FROM THE PLEADING WHICH IT AMENDS, BY BRACKETING OR STRIKING THROUGH THE TEXT TO BE DELETED AND UNDERLINING THE TEXT TO BE ADDED. IF A MOTION FOR LEAVE TO AMEND IS GRANTED, THE MOVING PARTY SHALL FILE AND SERVE THE AMENDED PLEADING WITHIN 10 DAYS OF THE ORDER GRANTING THE MOTION, UNLESS THE COURT OTHERWISE ORDERS.

2. 3. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within 10 days after service of the amended pleading, whichever period may be the longer, unless the court otherwise orders.

Comment

Ariz. R. Civ. P. 15(a)(2) is new. The first sentence is identical to a provision in LRCiv 15.1 of the Rules of Practice of the United States District Court for the District of Arizona. New Ariz. R. Civ. P. 15(a)(2) is designed to allow the Court and the parties to clearly identify the language to be amended in a motion for leave to amend a pleading and the presumptive time to file an amended pleading when leave to amend is granted. Former Ariz. R. Civ. P. 15(a)(2) is moved to new Ariz. R. Civ. P. 15(a)(3), but with no change in text.

/kdl